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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ROMUALDO C., A Person Coming Under
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROMUALDO C.,

Defendant and Appellant.

F044557

(Super. Ct. No. JW101837-00)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Jon E. Stuebbe, Judge.

Tara K. Howard, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Brian Alvarez and Robert P. Whitlock, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J., and Gomes, J.

The court adjudged appellant, Romualdo C., a ward of the court (Welf. & Inst. Code, § 602) after it sustained allegations charging him with second degree robbery (Pen. Code, § 211) and possession of stolen property (Pen. Code, § 496, subd. (a)). On appeal, Romualdo contends the court erred: 1) when it adjudicated him in possession of stolen property; and 2) by its failure to award him any predisposition credit. We agree with these contentions and modify the judgment.

FACTS

On June 16, 2003, 12-year-old Victor E. and his five-year-old brother walked to a 99 Cent Store in Bakersfield to buy batteries for his uncle. As Victor approached the store, 12-year-old Chris M. got off from the back of a bicycle 11-year-old Romualdo was riding and told Victor to show him his money. When Victor said he did not have any, Chris pushed him to the ground and took a \$20 bill away from him. Chris then got back on Romualdo's bicycle and he and Romualdo rode away.

Later that day when questioned by police officers, Romualdo had in his possession \$5 that Chris gave to him after Chris changed the \$20 bill that he took from Victor.

DISCUSSION

The Receiving Stolen Property Offense

Romualdo contends his adjudication for robbery prohibited the court from adjudicating him for possession of stolen property. Respondent concedes and we agree.

Penal code section 496, subdivision (a), in pertinent part, provides that "no person may be convicted both pursuant to this section and of the theft of the same property." (See also *People v. Allen* (1999) 21 Cal.4th 846, 857.)

Here, the \$5 confiscated from Romualdo were part of the \$20 that he and Chris took from the victim. Thus, in accord with the foregoing authorities, we conclude that the court's true finding on the robbery count precluded it from adjudicating Romualdo on the receiving stolen property count.

Romualdo's Predisposition Credit

Romualdo contends that prior to his disposition hearing he was in custody at least one day. Thus, according to Romualdo, the court erred in not awarding him any predisposition credit. We agree.

Romualdo's probation report indicates he was arrested on June 16, 2003, after he was interviewed by a police officer. Additionally, the underlying petition, which is dated October 1, 2003, and was refiled on October 8, 2003, indicates that Romualdo was in custody when it was issued. However, the court did not award Romualdo any predisposition credit. This was clearly error because a juvenile is entitled to predisposition credit for the days he spent in actual custody prior to his disposition hearing (*In re Eric J.* (1979) 25 Cal.3d 522). We remand to the juvenile court so it may determine how many days of predisposition credit Romualdo is entitled to because it is unclear from the record how many days Romualdo was in custody prior to his disposition hearing.

DISPOSITION

The true finding on the allegation of violation of Penal Code section 496, subdivision (a) is reversed. The matter is remanded to enable the trial court to calculate Romualdo's predisposition credits. In all other respects, the judgment is affirmed.